

Meeting Summary
DNR Clean Air Act Task Force
August 28, 2000 - Madison, WI

Participants: Patrick Stevens, WI Manufacturers & Commerce; Bob Fassbender, Hough Fassbender Osborne & Associates; Hank Handzel, DeWitt Ross & Stevens (for WI Paper Council and Printing Industries of WI); Ed Wilusz, WI Paper Council; Louis Skibicki, RTP Environmental Associates; Terry Coughlin and Kathleen Standen, WI Electric Power Co.; Doug Aburano and Jacqueline Nwia, U.S. EPA Region 5; Bob La Placa, Southern Energy, Inc.; Tom Walker, WI Transportation Builders Association; Dave Matzen, Rep. Steve Kestell's office; Patrick Vander Sanden, Rep. Joe Leibham's office; Karen Schapiro, Frazer Schapiro and Rich; Todd Palmer, DeWitt Ross & Stevens; Jill Stevens, Alliant Energy; Harold Frank, Dairyland Power Cooperative; David Donovan, Xcel Energy (Northern States Power Co.); Linda Bochert, Michael Best & Friedrich; Greg Eirschele, Applied Environmental Sciences; Jeff Schoepke, Gov. Thompson's office; Keith Reopelle, Wisconsin's Environmental Decade; Dave Morris, Plastics Engineering Co.; Patrick Mueller, Alliant Energy; Bob Evert, Exxon-Mobil; Patricia Trainor, Carolyn Amegashie, Dennis Presser, WI Dept. of Transportation; Sally Jenkins and Ken Detmer, Public Service Commission of Wisconsin; Neil Howell, Dept. of Administration; Marcia Penner, DNR Legal Services; Elizabeth David, Lance Potter, DNR Office of Management & Budget; Dan Schramm, Lakshmi Sridharan, Lloyd Eagan, Larry Bruss, Anne Urbanski, DNR Bureau of Air Management.

Overheads: Attainment demonstration for the 1-hour ozone NAAQS, Agency CAATF briefing, 8/27/00

Next meeting: *Thursday, September 21, 2000, from 9:30 a.m. to noon in Room 041, GEF 3, 125 S. Webster St., Madison, WI.*

Discussion:

Lloyd Eagan described the meeting as a "conceptual briefing" on the rule package that DNR will present to the Natural Resources Board for the one-hour ozone attainment demonstration State Implementation Plan (the "ozone SIP"). As a result of the U.S. Circuit Court ruling in March 2000, Wisconsin will not be preparing a regional NOx reduction plan related to transport. It is faced with having only nine months to put together the 1-hour ozone SIP and submit it to USEPA by December 31, 2000, which is much less time than usual. The usual public involvement process was modified to accommodate this compressed schedule. DNR held public meetings and public hearings to ask stakeholders for their comments on a long list of potential options; however some people mistakenly thought the department wanted to implement all of the items in the list. Because of the very short time frame, the department wanted to lay out and receive comments on all the options at once; however, Eagan emphasized, DNR never intended to include all possible options in the final rule package. Eagan said she and Larry Bruss had been briefing NRB members individually (as well as the state's Interagency Clean Air Task Force) and would complete that process before the September NRB meeting.

Eagan said she would cover the one-hour attainment demonstration plan, why it is required, the "big menu" of rule options in the draft plan, comments DNR received on the draft plan, a summary of DNR's plan as proposed for adoption by the NRB, and then highlight some outstanding issues. Because Wisconsin has one-hour ozone nonattainment areas, the 1990 Clean Air Act requires the state to put together a plan telling EPA how it will attain the 1-hour ozone standard by 2007. This plan was actually due in 1994; however Wisconsin and many other states received permission to delay that submission while they dealt with ozone transport issues through the Ozone Transport Assessment Group (OTAG) process. In 1997, after the OTAG process ended, EPA issued the "NOx SIP call" to reduce emissions of nitrogen oxides. Following the March 2000 court decision EPA told affected states they had to submit their ozone SIPs by 12/31/2000. These plans must show how a state will reduce the ozone problems it sends to other states (transport) as well as how it will reduce emissions that contribute to ozone problems within the state (Rate of Progress reductions). The court decisions said that, based on modeling, Wisconsin's emissions do not impact any one-hour nonattainment areas outside the state, so Wisconsin does not have to make any transport-related reductions, but it still must make ROP reductions; Eagan said many people seem to be confused about this issue. The new SIP also must establish Reasonably Available Control Technology standards for VOC emissions from major sources in southeastern Wisconsin as well as an "excess emissions fee". These requirements are hard-wired in the Clean Air Act and EPA must require them. Eagan also noted that, contrary to some opinion, the plan does not address the new 8-hour ozone standard.

Regarding the menu of control options in the draft plan, Eagan said DNR asked stakeholders to examine all of them and let the department know which parts they could live with, which parts they hated, and how DNR

could help industries implement these activities. The draft plan proposed statewide application of certain provisions, ROP reductions for 9 counties near Lake Michigan, RACT controls for both NO_x and VOC emissions, and splitting the state into two "ozone control regions" and one "ozone maintenance region". Eagan summarized the *types of comments received* (71 total) and DNR's response, as follows (comments made during the meeting are shown [in braces]):

- ***The draft plan goes beyond the legal requirements of the Clean Air Act.*** DNR believes its plan is not more stringent than federal requirements because ROP requirements are in state statutes as well as federal legislation.
- ***ROP controls should not be required if the state is modeling attainment without those controls.*** The Clean Air Act clearly requires affected states to get ROP emission reductions whether upwind reductions are made or not. Also, the state cannot rely 100% on other neighboring states reducing their emissions that contribute to ozone transport.
- ***There is no ROP requirement in Moderate nonattainment counties.*** EPA guidance allows us to take credit for emissions reductions here, and there are advantages to doing so.
- ***Modeling shows attainment without additional emission reductions, thus there is need for more reductions.*** DNR believes its plan focuses on ROP reductions. [Tom Walker asked what consequences DNR might face if other states did not submit SIPs by the deadline and how DNR would seek relief if that happened. Eagan replied that Wisconsin would not attain the ozone standard, the excess emissions fee would go into place and citizens would suffer from continued exposure to unacceptable ozone levels. Wisconsin might consider filing a 126 petition depending on how the other states' failures impacted us.]
- ***Neither the maintenance region nor the secondary ozone control region contributes to ozone problems in the primary ozone control region.*** DNR believes they do contribute.
- ***The excess emissions fee is counterproductive and doesn't encourage early reductions.*** [Hank Handzel asked what legal authority DNR had for imposing this fee.] This fee is mandated by federal law - the 1990 Clean Air Act Amendments.
- ***The 3% contingency should be removed from ROP-related limitations.*** DNR believes it has to have a 3% contingency, and has designed a plan to push the emission reductions back in the planning process.
- ***DNR should create a voluntary program to obtain emission reductions.*** DNR plans to do this.
- ***Offsets are an unnecessary burden.*** DNR has dropped offsets from this plan.

Eagan said DNR's final proposal for the one-hour ozone attainment demonstration SIP will include 4 items:

- Rate of Progress reductions in eight counties (Manitowoc, Sheboygan, Ozaukee, Washington, Milwaukee, Waukesha, Racine and Kenosha), including I/M cutpoints;
- an excess emission fee;
- modeled demonstration of attainment; and
- RACT for VOCs, though DNR has changed some provisions in the RACT rules.

DNR has not defined any ozone control regions or an ozone maintenance region because new OCRs might need to be established later if the courts uphold the 8-hour ozone standard. Tom Walker asked whether Manitowoc and Sheboygan counties are contributing more or less than their proportional share of the 1990 emissions baseline. Larry Bruss replied that in the department's 1992 plan for reducing emissions by 15% (the 15% plan), the six southern counties (classified as severe nonattainment) contributed more than their proportional share to help the moderate nonattainment counties, whereas in the new plan the moderate counties are contributing to help the southern counties.

Eagan said DNR is seeking ROP reductions for both NO_x and VOCs for the eight counties. This would affect 16 large industrial facilities plus five large electric generating units in those counties, totaling 30 emission units, primarily very large boilers greater than 250 MMBTU/hr. plus some internal combustion turbines. DNR is proposing NO_x controls on these existing point sources, plus new NO_x Limits for new and modified point sources, so that new sources would meet the cleanest emission standards. No offsets are proposed. DNR also will propose NO_x cutpoints for vehicle I/M testing and VOC RACT for industrial source categories after 1993. Greg Eirschele asked if these provisions meant that the NO_x waiver would stay in effect; Bruss said yes and noted that without the NO_x waiver, all industrial sources in those counties would have to install NO_x RACT controls. The emission rate for the five large EGUs starts at 0.33 lb/MMBTU in 2002, then ratchets down to 0.28 lb/MMBTU in 2007. Bruss noted that WEPCO is proposing a Project XL project to USEPA, which goes above and beyond the emission reductions required by this proposal. DNR's plan is designed so that the XL project could work as

WEPCO has proposed it. Emission rates are effective on December 31 of each year, not May 1, which gives sources an additional season to implement controls. For the 16 industrial facilities, DNR is proposing existing source emission limit performance standards effective on December 31, 2002, rather than May 1, 2002. These limits do not include the "stoker boiler" category.

Bruss showed a side-by-side comparison of the draft plan with the final proposal. In addition to the 4 items Eagan noted above, the final plan includes minimum performance standards for new sources in 2001 and for existing facilities by December 2002. There will be no Rate of Progress requirements for counties outside the eight counties listed above. DNR will suggest voluntary combustion optimization, tune ups and NOx performance standards for large industrial sources outside the eight counties. DNR expects the proposal to get 36-45 tons of NOx reductions from the EGUs and .85 tons from gas/oil burners. Bruss explained the rationale for the final proposal. There was considerable controversy about and very little support for the possible control programs in the secondary ozone control region and the ozone maintenance region in the draft plan. DNR was concerned about legal challenges and preferred to work with sources to get emission reductions that make sense, including through voluntary reduction programs. Eagan said DNR has statutory authority to establish a "bank" for early reductions credits; a new stakeholder group will hold its first meeting on this topic on September 12. Offsets were the least popular item in the draft plan; Bruss noted that it would have taken 18 months to get offsets going, so facilities could not have obtained offsets in time to meet the first ROP requirement. The 3% contingency requirement is being handled by pushing it back and not implementing those reductions until 2003. The Clean Air Act requires ROP reductions in severe ozone nonattainment areas, so those six counties in southeastern Wisconsin must do ROP. Sheboygan and Manitowoc counties are still experiencing enough ozone exceedances to violate the 1-hour ozone standard. DNR examined the cost per ton to make ROP reductions at all EGUs in the area; one EGU in Sheboygan County can get significant reductions for roughly \$400/ton, while ROP reductions at EGUs in southeastern Wisconsin will average closer to \$1,300/ton. Including these two counties reduces the overall cost to taxpayers. Sheboygan County already has a vehicle I/M program; having the same NOx cutpoints (pass/fail parameters) in all seven I/M counties makes more sense than having a different standard in one county. Sheboygan County has only one EGU and 3 large industrial sources which, Eagan and Bruss said, should not have to do a lot to meet this standard. Skibicki asked if including Manitowoc County really helped Wisconsin to attain the ozone standard; Eagan and Bruss said yes, it does. Bruss said that reductions due to New Source Performance Standards (NSPS) in the eight counties will count toward ROP reductions while limiting the growth rate and intrusion of dirty sources into Wisconsin. He noted that if existing sources were not included in the plan, utilities would have to bear the burden of more of the cleanup effort. Overall, DNR felt it was more equitable in terms of cost to include existing source performance standards. Skibicki asked about the deadline for implementing the minimum performance standard; Eagan said that would be whenever the emission limits become effective in Wisconsin's permitting system. Bruss noted there was only 1 negative comment about NOx cutpoints for I/M.

Bruss said that while the department believes it has done a good job addressing most of the comments received, there are a few areas of continued concern:

- **A belief that Wisconsin should not have to do anything.** Bruss said DNR believes it must take these steps or the state will be exposed to federal sanctions, meaning offsets would be increased from 1.1 to 1 to 2 to 1 in the nonattainment area, and the state would lose federal highway funds.
- **Questions about requiring Rate of Progress reductions in Sheboygan and Manitowoc counties.** Because of continued violations of the 1-hour ozone standard in those counties, DNR believes they should be included in the plan.
- **Timing for adoption** - DNR must get the package to the legislature during October, as they are prohibited from legislative activity after October 31.

Tom Walker asked when he could see the final transportation conformity numbers; Eagan said she could discuss them with him before the rule package was finalized. Hank Handzel said he heard that EPA would not require ROP reductions in a certain area that had monitored attainment. Doug Aburano said he was not aware of this. Bruss noted that the six-county severe nonattainment area is considered a single unit; if even one monitor has a violation, all six counties must be classified as nonattainment (this is hardwired in the Clean Air Act). Keith Reopelle asked Eagan to discuss other states' plans that might impact Wisconsin, how those states are doing in terms of complying with the NOx SIP call, and how a failure to comply might affect Wisconsin's plans. Eagan noted that Illinois and Indiana had counted on a four-state plan and now are scurrying to move forward on crafting

state rules to implement the SIP call. Michigan does not have to do a one-hour attainment demonstration but is developing a rule to comply with the SIP call. She was not sure about Ohio. Fassbender stated it was his understanding that EPA will allow Wisconsin to take credit for NOx SIP call reductions in other states; he doesn't see how what other states are doing would affect Wisconsin's submittal. Eagan said they don't but it is sensible to do ROP reductions anyway, first because we have to, but also because we can't be sure other states will do what they are supposed to do. Ed Wilusz inquired about the date of the mid-course correction; Aburano replied this would happen in either 2003 or 2004. Eagan said if Wisconsin has attained the 1-hour standard by then, it won't have to do ROP reductions after that. If Wisconsin got some early reductions, our monitors would measure lower ozone levels sooner. Wilusz asked what Wisconsin would have to do for this mid-course correction; Bruss said he assumes that some additional monitoring would be required and that the 8-hour ozone standard would figure into it. One person asked if DNR had approached EPA about getting an extension on submitting the SIP. Bruss replied that Wisconsin is already six years late and EPA is under a consent decree with the Natural Resources Defense Council to impose a Federal Implementation Order by (what date?), 2001 on states that do not submit their ozone SIPs on time.

Bruss then discussed sources likely to be affected by DNR's proposal, which would apply to 17 industrial sources and five electric generating units in Sheboygan, Ozaukee, Milwaukee and Kenosha counties. DNR engineers have determined that 40% of the necessary reductions can be obtained from a single EGU in Sheboygan County at a cost of \$400/ton. Bruss outlined the types of controls DNR has proposed for various sources in the eight counties affected by the SIP. He noted that slight reductions in emission rates increase the cost-per-ton of emission reductions from EGUs. Costs for the 17 industrial facilities range from \$200/ton to savings of \$250/ton. Bruss showed a table of selected performance standards for various types of new sources. The table is designed to give the NRB an idea of the kinds of controls the department normally sees in new source performance standards. Handzel asked if the final rule language would be clear enough so facilities could tell whether or not they are affected; Bruss (or Tom Karman?) said the rule will identify the size of equipment, fuel type and emission rate, which both facilities and DNR permit writers need to know. Karen Schapiro asked if this meant NSPS, in this proposal, would be based on source category rather than potential to emit. Karman said it would be defined by capacity and there would be several emission-capacity thresholds depending on type of combustion equipment. Assuming the NOx waiver remains in effect, PSD sources will have to install Best Available Control Technology. Wilusz asked if DNR had set a threshold to identify existing sources that will be affected by the proposal. Bruss said yes, but he wasn't sure exactly what it was. Eagan said DNR did not want to post this information publicly about existing sources until staff had talked with all the affected sources. She suggested people contact Tom Karman with questions about limitations on new or modified sources as defined in Wisconsin's New Source Review rules. Bruss said the performance standards would generate more emission reductions than Wisconsin would get just through federal NSR standards, but they are not technology-forcing. Someone asked if reformulated gasoline would be required in Sheboygan County. Eagan said DNR does not propose expanding VOC controls beyond the three industrial categories in the proposal. While Sheboygan County is technically an attainment area, it has "fallen off the wagon" and violated the ozone standard recently. DNR has determined Sheboygan County contributes to its own ozone problems, so the county has to implement measures in its ozone maintenance plan - which would include RFG. However if Sheboygan County is included in the attainment demonstration, that replaces the maintenance plan and RFG will not be needed in Sheboygan County. Fassbender said he thought EPA guidance would allow DNR to substitute something other than RFG; however Eagan said she didn't know what control measures could obtain comparable emission reductions.

Eagan said DNR would work diligently to revise the rule package to reflect these concepts, will meet with stakeholders individually, and would try to post the revised rule package on the web around September 8. The rule package will go to the NRB members before it is posted on the DNR website. The Natural Resources Board will discuss the proposal at their September meeting in Ashland. The next Clean Air Act Task Force meeting will take place after the rule package is posted and prior to the NRB meeting.